

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

BERNINA OF AMERICA, INC.,)	
)	
Plaintiff,)	
)	
v.)	No. 10 C 4917
)	
IMAGELINE, INC., et al.,)	
)	
Defendants.)	


MEMORANDUM ORDER

Bernina of America, Inc. ("Bernina") has filed its Answer and Affirmative Defenses to defendants' First Amended Counterclaims. This memorandum order is issued sua sponte because two paragraphs of that response require correction.

Answer ¶¶72 and 73 inexplicably depart from the clear path marked out by Fed. R. Civ. P. ("Rule") 8(b)(5) for the language of the disclaimer required to get the benefit of a deemed denial of an adversary's allegations. Moreover, that noncompliance with Rule 8(b)(5) has been aggravated here by the addition of the clause "and therefore denies the same." In the latter respect, that is of course oxymoronic--how can a party that must assert (presumably in good faith) that it lacks even enough information to form a belief as to the truth of an allegation then proceed to deny it in accordance with Rule 11(b)?

Accordingly Answer ¶¶72 and 73 are stricken. Bernina is granted leave to file an amendment correcting the errors identified here on or before January 27, 2011 (this does not call

for a full-fledged Amended Answer, but rather a brief pleading that addresses only the two paragraphs involved).

A handwritten signature in black ink, reading "Milton I. Shadur". The signature is written in a cursive style with a large, stylized "M" and "S".

Milton I. Shadur
Senior United States District Judge

Date: January 18, 2011